

STATE OF MICHIGAN
COURT OF APPEALS

RODNEY DUSKIN/ALL OTHERS SIMILARLY
SITUATED,

Plaintiff-Appellee,

v

DEPARTMENT OF HUMAN SERVICES,

Defendant-Appellant.

FOR PUBLICATION
April 1, 2014

No. 310353
Ingham Circuit Court
LC No. 06-001459-CD

Advance Sheets Version

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

RONAYNE KRAUSE, P.J. (*concurring*)

I concur in reversing the class certification because the proposed class has not established objective criteria for certification. I believe that a poisonous working environment can be harmful, and I am not persuaded that it would be impossible to certify a class similar to the proposed class here. However, plaintiffs simply fail to undertake the simple and elementary prerequisite of proving that each member of the proposed class individually has an objective basis for being defined as a member therein.

This Court has previously addressed a proposed certification of a class consisting of “chiropractors who have not sought membership with BCN [Blue Care Network] because doing so would be futile given BCN’s open practice of not allowing chiropractors to become members of BCN.” *Mich Ass’n of Chiropractors v Blue Care Network of Mich, Inc*, 300 Mich App 577, 583; 834 NW2d 138 (2013). I cannot distinguish between that proposed class and the instant proposed class of male minority employees who have not sought career advancement with defendant because doing so would allegedly be futile given defendant’s alleged practice of not promoting male minority employees.

This Court held that class uncertifiable “because membership cannot be established without knowing the subjective reason why each chiropractor gave up on the quest to affiliate with BCN.” *Id.* at 590. The instant proposed class is therefore likewise uncertifiable. The trial court’s class certification must, as the majority holds, therefore be reversed. I concur in the result reached by the majority on that basis, but I decline to consider any of the other issues discussed because I find doing so unnecessary.

/s/ Amy Ronayne Krause